STATE OF NEW JERSEY

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

NOTICE OF RULE WAIVER/MODIFICATION/SUSPENSION

PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY)(MARCH 9, 2020)

COVID-19 STATE OF EMERGENCY

Temporary Rule modification and partial waiver adopted by Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development

Date: March 30, 2020

Authority: N.J.S.A. App.A:9-45 & App. A:9-47; Executive Order No. 103 (Murphy)("EO 103")

Effective Date: Retroactive to March 9, 2020 (the date E.O. 103 was approved by the Governor)

Expiration Date: Upon the Governor lifting the state of emergency and state of public health emergency and rescinding E.O. 103

This is an emergency adoption of a temporary modification, and partial temporary waiver, of the public works contractor registration rule at N.J.A.C. N.J.A.C. 12:62-2.2(a). Section 6 of EO 103, issued in response to the COVID-19 pandemic, authorizes agency heads to waive/suspend/modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the Department of Labor and Workforce Development is modifying its rules as follows:

Existing N.J.A.C. 12:62-2.2(a) states that upon receipt of a fully completed public works contractor registration form, the associated statutory filing fee, and all supporting documentation required under N.J.A.C. 12:62-2.1, the Commissioner shall issue a certificate of registration to the contractor within 30 days. The certificate of registration is good for one year. Public works contractors who have successfully completed two years, may elect to renew their registration every two years and pay a reduced fee. The rule modification would permit the Department, during the state of public health emergency declared by the Governor due to the COVID-19 pandemic, to automatically issue to all contractor registration **renewal** applicants who submit their applications using the Department's on-line application process a certificate of registration based on an INTERIM APPROVAL, which would be effective for 120 days. At the end of the 120 days, the Department would fully evaluate the renewal application.

Regarding applicants for **initial** public works contractor registration, and any other applicants who do not submit their applications for public works contractor registration using the Department's on-line application process, the Department would waive the requirement within N.J.A.C. 12:62-2.2(a) that it issue a certificate of registration within 30 days, permitting it to delay evaluation of the initial or paper-filed registration application and issuance of a certificate of registration until the Governor has lifted the state of emergency and state of public health emergency. The vast majority of renewal applications for public works contractor registration are filed on-line. Under the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., a contractor is prohibited from bidding on or engaging in any public work or any work for which the contractor is required to pay the prevailing wage under a law other than the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., such as projects receiving financial assistance from the Economic Development Authority, unless the contractor possesses a valid certificate of registration issued by the Department. It is vital to the State and its citizens that public works projects and other covered projects that are undertaken with State financial assistance are able to continue during the state of emergency. Automatically issuing interim approvals for electronically filed public works contractor registration renewal applications will permit the existing group of public works contractors, who have already undergone previous vetting by the Department, to continue bidding on and engaging in work on covered projects during the state of emergency. Waiving the 30-day requirement for issuing a certificate of registration to initial applicants and those who file paper applications will relieve the Department of the burden of evaluating those new applications during the state of emergency, when Department staffing levels are impacted by the COVID-19 pandemic and the measures being taken to slow the spread of the disease. The Department believes that this will strike the appropriate balance between managing workflow with limited resources during the state of emergency, while minimizing the impact on vital statewide public works.

I find that modification of the rule, N.J.A.C. 12:62-2.2(a), to allow for the interim approval of public works contractor registration renewal applications filed using the Department's on-line application process for a period of 120 days, and waiver of the 30-day requirement within that rule for issuance of a certificate of registration to initial public works contractor registration applicants and those who file paper applications is necessary because enforcement of the existing rule in its current form would be detrimental to the public welfare during this emergency.

Full text of the modification and partial waiver follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

12:62-2.2 Issuance and term of certificate of registration

(a) Upon receipt of the fee, a fully completed form and all documentation required under N.J.A.C. 12:62-2.1, the Commissioner shall issue a certificate of registration to the contractor within 30 days[.] **; except that retroactive to March 9, 2020, the date upon which the Governor signed Executive Order 103, declaring a state of public health emergency and state of emergency, and continuing until the Governor rescinds Executive Order 103, lifting the state of public health emergency and state of emergency:**

1. For all initial contractor registration applications and other contractor registration applications not submitted through the Department's on-line application process, the 30-day deadline for issuance by the Department of a certificate of registration shall be waived; and

2. For all renewal contractor registration applications submitted through the Department's on-line application process, the Department shall automatically issue an interim approval, which shall be effective for 120 days.

i. At the end of the 120-day interim approval period, the Department shall fully evaluate each renewal contractor registration application and either grant or deny the application.

(b) through (f) (No change.)

3/31/2020

Date

Robert Asaro-Angelo, Commissioner
Department of Labor and Workforce Development